

20. Request IV-17—Flashing Signal Display for Fire Preemption
21. Request IV-18—No Turn On Walk
22. Request Sg-104—Pedestrian Indication at T-Intersection
23. Request VI-8—Orange Stop Ahead and Yield Ahead Symbol Signs
24. Request VI-9—Prohibit Use of Metal Drums
25. Request VI-10—Use of Yellow Background Signs in Work Zones
26. Request VIII-1—Lateral Clearance for Flashing Lights and Gates
27. Request IX-3—Hostel Signs
- Although Requests Nos. II-23, III-14, and III-17 are not being adopted, some of the more pertinent material developed concerning these requests will be considered for inclusion as guidance in the Traffic Control Devices Handbook. The majority of the respondents concurred in the recommendations not to adopt these requests.
- Action on the following requests is being deferred pending availability of additional research or study data:
1. Request II-5—Recreational and Cultural Interest Area Signs
 2. Request II-33—Hazardous Material Routing Sign
 3. Request II-37—YIELD Signs in Conjunction with STOP Signs
 4. Request II-55—Symbolic PUSH BUTTON FOR WALK SIGNAL Sign
 5. Request II-56—Symbolic CROSS ON WALK SIGNAL ONLY Sign
 6. Request III-3—Reduced Edgeline Width to 2 Inches
 7. Request III-5/M-46—No-Passing Zone Markings
 8. Request III-9—Use and Spacing of Raised Pavement Marker
 9. Request III-12—Mandatory Center Lines
 10. Request III-13—Mandatory Lane Lines
 11. Request IV-8—Alternative to Full Signalization at School Pedestrian Crossings
 12. Request IV-15—Strobe Light Traffic Control Device
 13. Request VI-1—Spacing of Channelization Devices
 14. Request VI-3—Temporary Markings for Construction and Maintenance Areas
 15. Request VI-14—Two-Way Traffic on Normally Divided Highway
 16. Request VIII-3—Crossbuck Border
- In consideration of the foregoing and under the authority of 23 U.S.C. 109(d), 315 and 402(a), and the delegation of authority in 49 CFR 1.48(b), the Federal Highway Administration hereby adopts the Manual on Uniform Traffic Control Devices as amended herein and amends Part 625 of title 23, Code of Federal

Regulations, by revising § 625.3(c)(1) to read as set forth below.

The Federal Highway Administration has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the Department of Transportation's regulatory policies and procedures. As stated herein the economic impact of these amendments is so minimal as not to require preparation of a full regulatory evaluation. For the same reasons, under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 23 CFR Parts 625 and 655

Design standards, Grant programs—transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on December 29, 1982.

R. D. Morgan,
Executive Director, Federal Highway Administration.

PART 625—DESIGN STANDARDS FOR HIGHWAYS

The FHWA revises § 625.3(c)(1) to read as follows:

§ 625.3 Standards, specifications, policies, guides, and references.

- * * * * *
- (c) *Traffic Control.* (1) Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, 1978, as amended, 1983.⁵
- * * * * *

[FR Doc. 83-320 Filed 1-7-83; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 249

Off-Reservation Treaty Fishing; Extension of Deadline for Issuance of Fishing Identification Cards

December 14, 1982.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: Temporary off-reservation fishing identification cards may be issued to any member of a tribe whose tribal roll is not yet current and approved, providing the member submits appropriate evidence of entitlement to membership. Under the present regulations, the expiration date for issuance of identification cards is December 31, 1982. The BIA is amending its regulations to continue issuance of identification cards to members of tribes whose roll is not yet current and complete. This extension will allow the BIA to continue issuing the temporary identification fishing cards until further notice.

DATE: This regulation is effective January 10, 1983.

FOR FURTHER INFORMATION CONTACT:

Joseph R. Jolala, Division of Fish, Wildlife and Recreation, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245.

SUPPLEMENTARY INFORMATION: On January 19, 1981, the Bureau of Indian Affairs published a Final Rule (46 FR 4873) extending the issuance of temporary identification cards to tribal members in connection with treaty fishing rights. That expiration date for issuing temporary identification cards is currently December 31, 1982. This amendment extends that date for issuing temporary identification cards to tribal members to be used in connection with treaty fishing rights until further notice. Advance notice and public procedure for rulemaking documents would delay issuance of the identification cards to those entitled to receive them and this delay is deemed contrary to the public interest; therefore, advance notice and public procedure are dispensed with under the exception provided in 5 U.S.C. 553(b)(B)(1970). Furthermore, the only change made by this amendment is to extend the date of expiration for issuance of tribal identification cards in § 249.3(b) until further notice. This change is deemed to be minor and technical in nature. For the above reasons, the Department has also determined that this amendment will be effective upon publication.

The authority for issuing this amendment is contained in 5 U.S.C. 301, and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM 8.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number

of small entities under the criteria established by the Regulatory Flexibility Act.

The primary author of this document is Joseph R. Jojola, Division of Fish, Wildlife and Recreation, Office of Trust Responsibilities, Bureau of Indian Affairs, telephone number (202) 343-6574.

List of Subjects in 25 CFR Part 249

Fisheries, Fishing, Indians, Reporting requirements.

PART 249—OFF-RESERVATION TREATY FISHING

Paragraph 249.3(b) of Subchapter J of Chapter I of title 25 of the Code of Federal Regulations is hereby revised to read as follows:

§ 249.3 Identification cards.

(b) No such card shall be issued to any Indian who is not on the official membership roll of the tribe which has been approved by the Secretary of the Interior. *Provided*, That until further notice, a temporary card may be issued to any member of a tribe not having an approved current membership roll who submits evidence of his/her entitlement thereto satisfactory to the issuing officer and, in the case of a tribally issued card, to the countersigning officer. Any Indian claiming to have been wrongfully denied a card may appeal the decision in accordance with Part 2 of this chapter.

Dated: December 14, 1982.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-558 Filed 1-7-83; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35

[T.D. 7860]

Temporary Employment Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982; Reporting by Certain Large Food or Beverage Establishments With Respect to Tips

Correction

In FR Doc. 82-33458 beginning on page 55215 in the issue of Wednesday, December 8, 1982, make the following corrections:

(1) On page 55215, first columns, the third sentence of the **SUMMARY** paragraph should have read "These

regulations affect employers at large food or beverage establishments and their food or beverage employees and provide them with guidance necessary to comply with the law."

(2) On page 55217, third column, in the last line of (5) under § 35.6053-1(b), "by employee's allocation" should have read "by such employee's allocation".

(3) On page 55220, middle column, the last sentence of (6) under § 35.6053-1(j) should have read "For example, a restaurant that records the gross receipts from its cafeteria style lunch operation separately from the gross receipts of its full service dinner operation may be treated as two separate food or beverage operations."

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 1

Demand for Repayment, Offset, Refund and Committee on Waivers and Compromises Authority

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is changing the procedures it uses to collect debts owed to it by beneficiaries of VA programs. These changes are necessary to comply with recent court decisions and legislation which afford greater procedural protections to these beneficiaries. Some of these changes have already been implemented in order to afford beneficiaries an opportunity to exercise their legal rights. These regulations will principally affect the manner and timing of recoupment of an overpayment from other VA benefits. In addition, the procedures for considering a request for waiver of an indebtedness are revised to comply with recent court decisions which require that an agency afford a beneficiary the right to request an oral hearing on their waiver request.

EFFECTIVE DATE: December 17, 1982.

FOR FURTHER INFORMATION CONTACT: Peter T. Mulhern (202) 389-3405, Office of Budget & Finance (047C5), 810 Vermont Avenue, N.W., Wash., D.C. 20420.

SUPPLEMENTARY INFORMATION: On page 62296 through 62298 of the Federal Register of December 23, 1981, there was published a notice of proposed rulemaking to issue regulations concerning demand for repayment, offset of indebtedness, refund of recouped indebtedness, and revision of Committee on Waivers and Compromises authority. Interested persons were given 30 days in which to

submit written comments, suggestions, or objections regarding the proposed regulations.

We received one set of comments, submitted jointly by the Legal Aid Society of Cleveland and the National Veterans Law Center. Although the comments refer to specific subsections of proposed § 1.911, it is clear that the primary concern is with the impact of recovery by offset from a debtor's future benefit payments, which is covered in proposed section 1.912.

In analyzing and responding to the comments, we have borne in mind the need to assure fairness in our procedures as we carry out our obligation to collect debts owed to the Federal Government. As indicated below, we have revised and clarified certain parts of the proposed regulations in light of the comments, and we have also reorganized the proposed regulations to make them more coherent, to eliminate unnecessary duplication, and to assure consistency with our dual objectives of fairness and effectiveness.

The Veterans Administration believes that its procedures, as set forth in these regulations, will result in the avoidance of unnecessary delay and administrative expense as well as the means for full protection of these debtors' statutory rights.

Note.—The references that follow are to §§ 1.911 and 1.912 as originally proposed. A summary of the two sections as reorganized follows our discussion of the comments.

The comments begin by asserting that paragraph (a) of § 1.911 is misleading and inconsistent with the purpose and intent of 38 U.S.C. 3102(a) and 3114. The commentators contend that demand for payment should not be made until after there has been notice of the debt and notice of the various rights that may be exercised by the debtor. We do not agree that § 1.911(a) is misleading or inconsistent with the purpose and intent of 38 U.S.C. 3102(a) and 3114. As a reading of proposed § 1.911 in its entirety makes clear, we provide notice of the debt and notice of the debtor's various rights together with the first demand for payment as soon as possible after the debtor has been notified of the overpayment. To postpone the demand for payment until after the debtor has been notified of the debt and the various rights would be inconsistent with the VA's duty to collect debts owed to the Federal Government by reason of the debtor's participation in a VA benefits program. Moreover, unless the debtor is aware that a demand for payment has been made, he or she may not fully recognize the consequences of delay in

exercising the rights of dispute and request for waiver. Postponing the demand for payment could be confusing with respect to those who do not dispute the existence or amount of the debt and who have no grounds for requesting waiver. Finally, nothing in section 3102(a) or 3114 of title 38 United States Code, suggests that a written demand for payment of the debt should await the debtor's pursuit of rights provided for under those sections.

The comments also suggest that specific language be added to proposed § 1.911(b)(2) to the effect that the reason or reasons for the indebtedness be stated in the notice in simple language that is sufficiently specific to enable the debtor to marshal evidence in his or her behalf. Further, proposed § 1.911(b)(4) should specify that the notice explain in simple terms what "waiver" is and what the requirements for waiver are. We agree generally with these comments and have made pertinent revisions.

The comments urge that § 1.911(b)(5) be revised to provide authority for "a pre-hearing determination in cases where such a decision would be favorable to the claimant." This comment implies that an initial determination based on a "paper" review (that is, a review on the record prior to hearing) is necessary in all cases where a request for waiver is received, in order to determine whether the information of record is insufficient for a decision on the request or adverse to the debtor. Nothing in title 38, United States Code, mandates such a pre-hearing "paper" review as part of our procedures. Rather, we afford to a debtor who has requested waiver and a hearing on the request, a hearing opportunity as early as possible. Our procedures thus differ from those of the Social Security Administration (SSA), the agency involved in *Califano v. Yamasaki*, 442 U.S. 682 (1979); SSA procedures permit an initial "paper" review prior to an oral hearing and prior to an offset.

Under our procedures, if the debtor requests the hearing in timely fashion, no recovery will begin until after the hearing and after the decision on the waiver. If the debtor requests the hearing at a later point, recovery will begin as originally scheduled; if waiver is later granted, amounts recovered will be refunded in accordance with 38 CFR 1.967. The purpose of the hearing opportunity is not to provide debtors with a means of delaying the collection of debts legitimately owed, but rather to give those debtors who request waiver the opportunity to offer testimony and other evidence that bears on the issues

involved in the waiver decision. A "paper review" that, if adverse, must be followed by a hearing opportunity prior to offset would provide no greater due process protection to the debtor than is already provided by affording the debtor a hearing opportunity on the waiver request as early as possible.

The comments also suggest that § 1.911(b)(7) is deficient, in terms of meeting the due process requirements of the Fifth Amendment and the requirements of section 3114 of title 38, in a case in which the debtor requests waiver within the allotted thirty-day period but does not request a hearing within that period. Under proposed § 1.911(b)(7), if the waiver is then denied, recovery by means of offset would begin thereafter. The comments urge that in such a case offset must be delayed until after the debtor has been afforded a further opportunity for a pre-recovery hearing. Neither the Due Process Clause nor section 3102(a) or 3114 of title 38 mandates multiple pre-recovery hearing opportunities. We do not believe that we are obligated to extend a further opportunity for hearing prior to offset when a decision against waiver has already been reached and the debtor had previously been extended the opportunity for a hearing prior to such decision. As previously indicated, our procedures grant the debtor a hearing opportunity as early as possible. Moreover, we notify the debtor that, if waiver is requested within thirty days and a hearing is requested on the waiver request, offset will not be initiated until after the hearing and after a decision is reached on the waiver request. We believe these procedures are adequate in the light of *Califano v. Yamasaki*, 442 U.S. 682 (1979) and the Due Process Clause, and consistent with the VA's duty to collect debts owed to the Federal Government, within the constraints imposed by section 3114 of title 38.

The comments urge further that § 1.911(b)(8) is deficient, in a situation in which the debtor disputes in timely fashion the existence or amount of the indebtedness but does not request waiver. The commentators argue that, if the decision on the dispute is adverse to the debtor, "he or she should be given additional notice of waiver and hearing rights, and a reasonable opportunity (i.e. thirty days) in which to exercise those rights."

In the event the claimant disputes the existence or amount of the debt, we would of course correct as soon as feasible an administrative error brought to our attention. In the case of a dispute that goes to a substantive issue of

entitlement, the panoply of appellate rights is available to the claimant. Although we disagree with the commentators' suggestion, we have revised the proposed regulations to clarify that a claimant may dispute the existence or amount of the debt at the same time he or she requests waiver, and, as long as the claimant files his or her dispute and waiver request within thirty days of the initial notification, offset will not begin until after decisions are reached respecting both. We see no necessity to provide a second thirty-day period. Section 3114(b) of title 38 does not require successive efforts to notify a debtor of his or her rights to dispute the debt and to request waiver. We recognize, however, that some claimants may believe that pursuing their right to dispute the debt is inconsistent with pursuit of their right to request waiver. Thus, our revision requires that the notice spelling out these rights clearly state that a claimant may pursue both rights simultaneously without prejudice to either.

Finally, the comments contend that 38 U.S.C. 3115 does not authorize the initial notice to state that failure to repay the debt in full within thirty days will result in the charging of interest or administrative costs or both, as would be required by proposed § 1.911(b)(9). According to the commentators, section 3115 is "clearly not intended to penalize those who exercise their due process rights * * *," and they note that, in some cases, the charging of interest and administrative costs would hurt those least able to afford such burdens.

The commentators appear to be proposing that VA refrain from charging interest on debts in situations where the debtor has filed a waiver request or a substantive appeal as well as in situations where the debt is to be collected by offset. They suggest that the "reasonable period of time" set forth in section 3115(b)(1)(B) of title 38, during which interest is not to be charged if the amount due is paid within such period, should be expanded to cover the period during which a debtor is exercising his or her rights or during which recovery is taking place by offset.

The commentators overlook the fact that section 3115(b)(1) grants authority to the VA to determine what constitutes a "reasonable period of time." By amendment to 38 CFR 1.919, published for public comment on August 26, 1981 (46 FR 43058), and approved by the Administrator on December 3, 1981 (46 FR 62057, Dec. 22, 1981), the VA has established, in subsection (e) of section 1.919, 30 days as a "reasonable period of time."

Nothing in the legislative history materials cited by the commentators suggests that VA can, by reason of the debtor's hardship or for any other reason, ignore the statutory directive to assess interest and administrative costs on outstanding debts in accordance with the law and regulations. Of course, such amounts can be waived, in whole or in part, in accordance with procedures applicable to waivers of other debts. (38 CFR 1.919(f)).

We also disagree with the commentators' proposal that § 1.911(b)(9), to the extent that it refers to the assessment of administrative costs, should be rescinded. The commentators incorrectly suggest that the VA's authority to assess administrative costs is limited to the "costs of collection on delinquent amounts." Rather, section 3115(c) of title 38 grants authority to the VA determine, by regulation, reasonable and appropriate administrative costs to be assessed. 38 CFR 1.919, referred to above, provides in paragraph (g) for the assessment of administrative costs in situations involving repayment agreements only where the debtor becomes delinquent in meeting the terms of the agreement. Although that section does not specifically so state, VA has no plans to assess administrative costs in situations where collection is being made by offset. Nevertheless, to the extent that a debtor not subject to collection by offset may be assessed administrative costs in accordance with 38 CFR 1.919, the notice described in the proposed regulations would include information to that effect.

Preparations are currently underway to implement the statutory mandate to assess interest and, under certain circumstances, administrative costs. Assessment of simple interest at a specified annual rate on debts owed the Federal Government in connection with the educational assistance programs is scheduled for April 1983 and, in connection with the home loan and compensation and pension programs, for March 1984. Initial demand letters will be revised to assure adequate notice regarding interest and possible administrative costs. As described in 38 CFR 1.919, the annual rate of interest will be based on the Treasury's cost of borrowing and updated annually. Once established for a particular debt, however, the rate will not change thereafter. Payments, including payments by offset, will be applied first to interest for that year and then to principal. Debtors will be advised that no interest will be charged if the

balance is paid in full within 30 days of the notification.

As noted above, we have reorganized the proposed regulations. As proposed, § 1.911 would have been captioned "Demand for repayment" and § 1.912, "Collection by offset." In the course of reviewing the proposed regulations preparatory to final publication, it became clear that the content of § 1.911 encompassed matters beyond the purview of "demand for repayment" and also that certain matters originally proposed to be included in that section more properly belonged to proposed § 1.912. Hence, both sections have been reorganized.

Reorganized § 1.911a would be captioned "Collection of debts owed by reason of participation in a benefits program." Paragraph (a) clarifies that the section does not apply to the Agency's other collection activities and gives cross-references to regulations governing such other activities.

Paragraph (b), subtitled "Written demands," sets forth the same matters contained in § 1.911(a) as originally proposed, but clarifies that follow-up demand letters will not be required if collection by offset under § 1.912a can be made.

Paragraph (c), subtitled "Rights and remedies," expressly sets forth rights and remedies available to debtors. Formerly, these were implied as necessary components of the written demand letters. This paragraph explicitly assures that a debtor can exercise the rights separately or simultaneously.

Paragraph (d), subtitled "Notification," expressly sets forth the content of the written notice which debtors have the right to receive and paragraph (e) provides a rule to govern sufficiency of such notification. Paragraph (f) sets forth important cross-references, including those pertinent to appellate rights, waiver requests, and the potential assessment of interest and administrative costs.

Reorganized § 1.912 retains the same caption, "Collection by offset," but is internally revised. Paragraph (a) enunciates the Agency's statutory obligation to collect debts owed to the Federal Government, by reason of an individual's participation in a VA benefits program, by offset against current or future VA benefits payments to that debtor. This paragraph also clarifies that offset shall commence promptly after proper notice to the debtor, with certain exceptions specifically provided for by the governing statute that are described in paragraphs (c) and (d). The first of those

exceptions, in paragraph (c), is that offset can be deferred if the debtor exercises, in timely fashion, certain rights such as the right to dispute or the right to request a waiver. The remaining exceptions are described in paragraph (d): Offset is not subject to deferral if collection of the debt would be jeopardized; in such case, notification pursuant to § 1.911(d) (as reorganized) is proper at the time offset begins or as soon thereafter as possible. Notification in advance of offset is not required if the United States has already obtained a judgment against the debtors.

Sections 1.911 and 1.912, as reorganized, have been renumbered as §§ 1.911a and 1.912a. These two sections will eventually be applicable to all debts which are the result of a debtor's participation in a Veterans Administration benefit program. At this time, however, these sections apply only to those debts subject to collection by offset against the debtor's monthly compensation or pension benefits. Notice will be published in the *Federal Register* when these sections become applicable to debts not subject to collection by offset against compensation or pension benefits, and §§ 1.911a and 1.912a will be republished as §§ 1.911 and 1.912.

We believe that the reorganized regulations are adequate to achieve our dual objectives of fairness to the Agency's debtors and effective collection of debts.

The Administrator hereby certifies that these rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the final regulatory flexibility analysis requirement of sections 603 and 604. The reason for this certification is that the rules affect only those individuals indebted to the U.S. Government as a result of participation in Veterans Administration benefit payment programs. These rules have been reviewed under E.O. 12291 and have been determined to be non-major because they only revise Veterans Administration debt collection, refund, and waiver procedures, and do not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies geographic regions.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims.

The proposed regulations, as amended, are hereby adopted as final and are set forth below.

Approved: December 17, 1982.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 1—[AMENDED]

38 CFR Part 1—General is amended as follows:

1. New § 1.911a is added to read as follows:

§ 1.911a Collection of debts owed by reason of participation in a benefits program

(a) *Scope.* This section applies to the collection of debts resulting from an individual's participation in a benefits program administered by the Veterans Administration. It does not apply to the Agency's other claims collection activities. (Note: School liability debts are governed by § 21.4009; financial institution debts are subject to Chapter II, Parts 209, 210, and 240 of title 31, Code of Federal Regulations; and other debts are governed by Chapter II of Title 4 of the Code of Federal Regulations.)

(b) *Written demands.* When the Veterans Administration has determined that a debt exists by reason of an administrative decision or by operation of law, the Veterans Administration shall promptly demand, in writing, payment of the debt. The Veterans Administration shall notify the debtor of his or her rights and remedies in connection with the debt and the consequences of failure to cooperate with collection efforts. Ordinarily, no more than three demand letters, at intervals of not more than thirty days, will be sent, but letters subsequent to the initial letter will not be necessary if:

(1) The Administrator determines that further demand would be futile;

(2) The debtor has indicated in writing that he or she does not intend to pay the debt;

(3) Judicial action to protect the Government's interest is indicated under the circumstances; or

(4) Collection by offset pursuant to § 1.912a can be made.

(c) *Rights and remedies.* Subject to limitations referred to in this paragraph, the debtor has the right to informally dispute the existence or amount of the debt, to request waiver of collection of the debt, to a hearing on the waiver request, and to appeal the Veterans Administration decision underlying the debt. These rights can be exercised

separately or simultaneously. Except as provided in § 1.912a (collection by offset), the exercise of any of these rights will not stay any collection proceeding.

(1) *Informal dispute.* This means that the debtor writes to the Veterans Administration and questions whether he or she owes the debt or whether the amount is accurate. The Veterans Administration will, as expeditiously as possible, review the accuracy of the debt determination. If the resolution is adverse to the debtor, he or she may also request waiver of collection as indicated in paragraphs (c)(2) and (c)(3) of this section.

(2) *Request for waiver; hearing on request.* The debtor has the right to request waiver of collection, in accordance with § 1.963 or § 1.964, and the right to a hearing on the request. Requests for waivers must be filed in writing. A waiver request under § 1.963 must be filed within two years of the initial notification to the debtor. If waiver is granted, in whole or in part, the debtor has a right to refund of amounts already collected up to the amount waived.

(3) *Appeal.* The debtor may appeal, in accordance with Part 19 of this title, the decision underlying the debt.

(d) *Notification.* The Veterans Administration shall notify the debtor in writing of the following:

(1) The exact amount of the debt;

(2) The specific reasons for the debt, in simple and concise language;

(3) The rights and remedies described in paragraph (a) of this section, including a brief explanation of the concept of, and requirements for, waiver;

(4) That collection may be made by offset from current or future Veterans Administration benefits, subject to § 1.912a; and

(5) That interest and administrative costs may be assessed, in accordance with § 1.919, as appropriate.

(e) *Sufficiency of notification.* Notification is sufficient when sent by ordinary mail directed to the debtor's last known address and not returned as undeliverable by postal authorities.

(f) *Further explanation.* Further explanation may be found for—

(1) Appellate rights, in Part 19 of this title;

(2) Notification of any decision affecting the payment of benefits or granting relief, in § 3.103(e);

(3) Right to appeal a waiver decision, in § 1.958;

(4) Refund to a successful waiver applicant of money already collected, in § 1.967; and

(5) The assessment of interest and administrative costs, in § 1.919. (38 U.S.C. 3102, 3114).

2. New § 1.912a is added to read as follows:

§ 1.912a Collection by offset.

(a) *Authority and scope.* The Veterans Administration shall collect debts governed by § 1.911a by offset against any current or future Veterans Administration benefit payments to the debtor. Unless paragraphs (c) or (d) of this section apply, offset shall commence promptly after notification to the debtor as provided in paragraph (b) of this section. The collection by offset of all other debts is governed by Part 102, Chapter II, of Title 4, Code of Federal Regulations.

(b) *Notification.* Unless paragraph (d) of this section applies, offset shall not commence until the debtor has been notified in writing of the matters described in § 1.911a(c) and (d) and paragraph (c) of this section.

(c) *Deferral of offset.* (1) If the debtor, within thirty days of the date of the notification required by paragraph (b) of this section, disputes, in writing, the existence or amount of the debt in accordance with § 1.911a(c)(1), offset shall not commence until the dispute is reviewed as provided in § 1.911a(c)(1) and unless the resolution is adverse to the debtor.

(2) If the debtor, within thirty days of the date of notification required by paragraph (b) of this section, requests, in writing, waiver of collection in accordance with §§ 1.963 or 1.964, as applicable, offset shall not commence until the Veterans Administration has made an initial decision on waiver.

(3) If the debtor, within thirty days of the notification required by paragraph (b) of this section, requests, in writing, a hearing on the waiver request, no decision shall be made on the waiver request until after the hearing has been held.

(d) *Exceptions.* (1) Offset may commence prior to the resolution of a dispute or a decision on a waiver request if collection of the debt would be jeopardized by deferral of offset. In such case, notification pursuant to § 1.911a(d) shall be made at the time offset begins or as soon thereafter as possible.

(2) If the United States has obtained a judgement against a debtor whose debt is governed by § 1.911a, offset may commence without the notification required by paragraph (b) of this section. However, a waiver request filed in accordance with the time limits and other requirements of §§ 1.963 and 1.964,

will be considered, even if filed after a judgement has been obtained against the debtor. If waiver is granted, in whole or in part, refund of amounts already collected will be made, in accordance with § 1.967, up to the amount waived. (38 U.S.C. 3114, Ch. 37).

§ 1.916 [Amended]

3. Section 1.916 is amended by changing the word "his" to the words "his/her".

§ 1.930 [Amended]

4. Section 1.930 is amended by changing the word "his" to the words "his/her."

5. In § 1.955, paragraph (d) is revised to read as follows:

§ 1.955 Regional office committees on waivers and compromises.

(d) *Single signature authority.* Where a request is for waiver of collection of a debt of \$1,000 or less, exclusive of interest, the Chairperson shall designate from members and/or alternates one person, with special competence in the program area where the debt arose, to consider the question. His/her signature alone to the decision will suffice. In compromise cases, however, three person panels are always required regardless of the amount of the debt. (38 U.S.C. 210(c)(1))

§ 1.966 [Amended]

6. In § 1.966, paragraph (b)(2)(ii) is removed.

7. Section 1.967 is revised to read as follows:

§ 1.967 Refunds.

(a) Except as provided in paragraph (c) of this section, any portion of an indebtedness resulting from participation in benefits programs administered by the Veterans Administration which has been recovered by the U.S. Government from the debtor may be considered for waiver, provided the debtor requests waiver in accordance with the time limits of § 1.963(b). If collection of an indebtedness is waived as to the debtor, such portions of the indebtedness previously collected by the Veterans Administration will be refunded. In the event that waiver of collection is granted for either an education, loan guaranty, or direct loan debt, there will be a reduction in the debtor's entitlement to future benefits in the program in which the debt originated.

(b) The Veterans Administration may not waive collection of the indebtedness of an educational institution found liable under 38 U.S.C. 1785. Waiver of collection of educational benefit

overpayments from all or a portion of the eligible persons attending an educational institution which has been found liable under 38 U.S.C. 1785 shall not relieve the institution of its assessed liability. (See 38 CFR 21.4009(f)).

(c) Any portions of indebtedness collected by the Veterans Administration arising from erroneous payment of pay or allowances shall be considered for waiver regardless of the date of request for waiver, as long as such request is filed timely in accordance with § 1.963a(c)(1). If collection is waived refund will be made to the employee provided that application for refund is made no later than two years following the date of waiver.

(d) Refund of the entire amount collected may not be made when only a part of the debt is waived or when collection of the balance of a loan guaranty indebtedness by the Veterans Administration from obligors, other than a husband or wife of the person requesting waiver, will be adversely affected. Only where the amount collected exceeds the balance of the indebtedness still in existence will a refund be made in the amount of the difference between the two. Otherwise, refunds will be made in accordance with paragraph (a) of this section. (38 U.S.C. 1785, 3102; 5 U.S.C. 5584).

[FR Doc. 83-461 Filed 1-6-83; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2070-6]

Standards of Performance for New Stationary Sources—Graphic Arts Industry: Publication Rotogravure Printing

Correction

In FR Doc. 82-30410 beginning on page 50644 in the issue of Monday, November 8, 1982, make the following corrections:

(1) On page 50644, third column, in the 17th line from the top of the page, "solvent-borne are" should have read "solvent-borne inks are".

(2) On page 50655, middle column, in paragraph 2.3 of Method 24A under Appendix A, in the sixth line, "D₀" should have read "D₁₀".

(3) On the same page, in the third column, the equation at the top of the page should have been labeled "Equation 24A-1", and "Report the weight fraction VOC W₀" should have

read "Report the weight fraction VOC W₀".

(4) In the same column, the second equation should have been labeled "Equation 24A-2", and the plus sign should have been an equal sign.

BILLING CODE 1505-01-M

40 CFR Part 60

[AD-FRL-2070-7]

Standards of Performance for New Stationary Sources; Metal Coil Surface Coating Operations

Correction

In FR Doc. 82-29693 beginning on page 49606 in the issue of Monday, November 1, 1982, make the following corrections:

(1) On page 49606, first column, in the 12th and 13th lines of the SUMMARY paragraph, "to all pollution" should have read "to air pollution".

(2) On page 49615, in § 60.463(c)(4)(vii), in the seventh line from the bottom of the third column, "which is" should have read "whichever is".

(3) On page 49616, in § 60.463(c)(4)(ix), "which is greater" should have read "whichever is greater".

(4) In the same column, under § 60.464, in the ninth line of paragraph (c), "± 2.5" should have read "± 2.5°C".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

41 CFR Part 13-1

Procurement Regulation; Debarment, Suspension and Ineligibility of Government Contractors

AGENCY: Commerce Department.

ACTION: Final rule.

SUMMARY: This notice prescribes the Department of Commerce policy and procedures for: (1) Distribution, use, and maintenance of the General Services Administration's (GSA) consolidated Government-wide list of debarred, suspended and ineligible contractors, and (2) debarment and suspension of Government contractors. The intended effect of this stated policy and procedures is to ensure that Government contracts are awarded to responsible contractors.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: John H. Dammeyer (Chief, Procurement Policy Division), Office of Procurement Services, Room 6411, Herbert C. Hoover Building, 14th & Constitution Ave NW.

Washington, D.C. 20230, Area Code 202-377-4248.

SUPPLEMENTARY INFORMATION: (a) FPR Temporary Regulation 65 requires agencies to establish procedures to provide for the effective use of GSA's consolidated list to ensure that agencies do not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as provided in this subpart.

(b) The FPR Temporary Regulation requires the debarring official to make certain determinations relating to debarment and suspension actions. These procedures specify the designated official responsible for granting informal fact-finding discussions, and taking other actions related to the debarment or suspension of concerns and individuals.

(c) The Temporary Regulation also requires agencies to establish internal procedures for effecting the policies and procedures of the FPR regarding the debarment, suspension, and placement in ineligibility status of concerns and individuals. The policy and procedures set forth in 41 CFR Part 13-1.6 will implement the FPR debarment and suspension policies and procedures.

(d) The Agency has not invited public comments on these procedures since they relate to Government contracts. The Department's internal procedures are referenced to the pertinent sections of the FPR revision. However, references to FPR Temporary Regulation 65 shall be deemed to refer to the appropriate Superseding Parts and Subparts of the FPR Amendment when issued.

List of Subjects in 41 CFR Part 13-1

Government procurement.

41 CFR Part 13-1 is amended as follows:

PART 13-1—GENERAL

1. The table of contents for Subpart 13-1.6—Debarred, Suspended and Ineligible Bidders is revised to read as follows:

Subpart 13-1.6—Debarred, Suspended and Ineligible Bidders

Sec.

- 13-1.600 Scope of Subpart.
- 13-1.601 Policy.
- 13-1.602 Definitions.
- 13-1.603 Establishment, maintenance and distribution of the consolidated Government-wide list of debarred, suspended, and ineligible contractors, and maintenance of agency records.
- 13-1.603-1 Consolidated list of debarred, suspended and ineligible contractors.
- 13-1.603-2 Agency records.
- 13-1.604 Treatment to be accorded listed contractors.
- 13-1.604-1 General.

Sec.

- 13-1.604-2 Review procedures.
- 13-1.604-3 Continuation of current contracts.
- 13-1.605 Debarment.
- 13-1.605-1 General.
- 13-1.605-2 Causes for debarment.
- 13-1.605-3 Procedures.
- 13-1.605-4 Period of debarment.
- 13-1.605-5 Imputed conduct.
- 13-1.606 Suspension.
- 13-1.606-1 General.
- 13-1.606-2 Causes for suspension.
- 13-1.606-3 Procedures.
- 13-1.606-4 Period of suspension.
- 13-1.606-5 Scope of suspension.
- 13-1.607 Agency procedures.

Authority: Sec. 205(c), 63 Stat. 390 as amended (40 U.S.C. 480(c)), unless otherwise noted.

2. The text of revised Subpart 13-1.6 reads as follows:

Subpart 13-1.6—Debarred, Suspended and Ineligible Bidders

§ 13-1.600 Scope of subpart.

This subpart prescribes the Department of Commerce (DOC) policy and procedures for: (a) Distribution, use, and maintenance of GSA's consolidated Government-wide list of debarred, suspended and ineligible contractors, and (b) debarment and suspension of Government contractors.

§ 13-1.601 Policy.

(a) It is the policy of DOC to solicit bids and proposals only from, award contracts to, and approve or consent to subcontracts with, responsible business concerns and individuals. Debarment and suspension are discretionary actions which, when accomplished in accordance with these procedures, are appropriate means to effectuate this policy.

(b) Due to the serious nature of debarment and suspension, they will be imposed only to protect the Government's interest (not for purposes of punishment), and only for the causes referenced in this subpart.

§ 13-1.602 Definitions.

Refer to § 1-1.602 of Temporary Regulation 65 which is incorporated into this subpart.

§ 13-1.603 Establishment, maintenance and distribution of the consolidated Government-wide list of debarred, suspended, and ineligible contractors, and maintenance of agency records.

§ 13-1.603-1 Consolidated list of debarred, suspended and ineligible contractors.

(a) Section 1-1.603-1 (a) of Temporary Regulation 65, which is incorporated into this subpart, requires GSA to compile and maintain a current,

consolidated list of contractors debarred, suspended, or declared ineligible by agencies or by the General Accounting Office (GAO), and to revise and distribute the list to agencies and the GAO.

(b) For the purpose of the requirements of § 1-1.603-1 (b)(1) through (4) which are also incorporated into this subpart:

(1) The Executive Director for Operations (referred to as the Executive Director throughout the remainder of this subpart) is responsible for notifying GSA of any DOC imposed debarments or suspensions of a contractor, or modifications or rescissions of these actions.

(2) The consolidated list will be distributed to procurement activities by the Office of Small and Disadvantaged Business Utilization.

(3) Preliminary inquiries concerning additional information desired on contractors included on the consolidated list shall be made by the respective reviewing procurement official directly to the agency or other authority that took the action. Unique or complex situations should be elevated to the Department's Procurement Policy Division within the Office of Procurement Services (OPS), and eventually to the Executive Director, as felt necessary.

(4) All procurement officials are responsible for familiarity with, and review of, the consolidated Government-wide list of contractors debarred, suspended or declared ineligible. Review of the continuing updates of the list is necessary to ensure that DOC solicits bids or offers from, performs pre-award surveys of, continues existing contracts with, and renews contracts or approves subcontracts for, only responsible business concerns and individuals.

§ 13-1.603-2 Agency records.

The minimum record requirements pertaining to each contractor debarred or suspended by DOC are incorporated into this subpart as contained in § 1-1.603-2 of the Temporary Regulation. These records shall be maintained for the Executive Director by the Office of Procurement Services.

§ 13-1.604 Treatment to be accorded listed contractors.

§ 13-1.604-1 General.

(a) *Actions after August 30, 1982.* If a listed contractor has been debarred or suspended by another agency based on policies and procedures in effect after August 30, 1982, that contractor will be excluded from receiving DOC contracts,

and DOC procurement officials shall not knowingly solicit offers from, award contracts to, renew or otherwise extend the duration of an existing contract with, or consent to subcontracts (which require Government approval) with these contractors, unless the Executive Director determines, in writing, that there is a compelling reason for such action.

In the event a procurement official identifies a prospective contractor or subcontractor (involved with a subcontract subject to Government consent) as being debarred or suspended on the consolidated list, and initially determines that there are compelling reasons for soliciting offers from or awarding contracts to this firm, the specific reasons supporting this determination shall be prepared by the chief of the procurement activity, in writing, and, after review by the Office of the Assistant General Counsel for Administration, submitted to the Executive Director for a decision. The Executive Director shall make a decision on the request within 30 working days of receipt. No contract solicitation, award, renewal or extension action shall be initiated unless, and until, the Executive Director has determined in writing that compelling reasons warrant such action.

(b) *Actions prior to August 30, 1982.* If a contractor has been debarred or suspended by DOC in accordance with policies and procedures in effect prior to August 30, 1982, that contractor shall be afforded the same treatment as explained in § 13-1.604-1(a). If a contractor has been debarred or suspended by another agency in accordance with policies and procedures in effect prior to August 30, 1982, there is no accompanying requirement for Government-wide debarment or suspension. Nevertheless, procurement officials within the Department shall consider such actions in determining contractor responsibility, and may recommend that debarment or suspension procedures be initiated based on the original action in accordance with § 1-1.605-2(d) and 1-1.606-2(d) of the Temporary Regulation which are incorporated into this subpart.

(c) *Ineligible Contractors.* The identification of ineligible contractors on the consolidated list will include specific information concerning the treatment to be accorded these contractors. Contractors declared ineligible on the basis of statutory or other regulatory procedures shall be excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Procurement officials shall

not solicit offers from, award contracts to, renew or otherwise extend the duration of an existing contract with, or consent to subcontracts with these contractors under those conditions and for that period. No waiver procedures exist which enable the Department to accord ineligible contractors treatment other than that specifically contained in the consolidated list.

§ 13-1.604-2 Review procedures.

Prior to initiating a pre-award survey or any procurement action set forth in § 13-1.604-1, the appropriate procurement officials shall review the consolidated list. If the prospective contractor or subcontractor is listed, it shall receive the treatment deemed proper according to the basis for its listing.

§ 13-1.604-3 Continuation of current contracts.

It is the responsibility of procurement officials, through the chief of the procurement activity, to notify the Executive Director, in writing, whenever it is determined that DOC has existing contracts or subcontracts with contractors which have been debarred or suspended. This notification shall contain recommendations and supporting information regarding whether or not existing contracts or subcontracts should continue, since these agreements may be continued unless the Executive Director determines that termination of the contract is in the Government's best interest. The Executive Director's resulting decision for continuation or termination of existing contracts or subcontracts shall be made within 30 working days of receipt of the recommendation data, and only after review by appropriate contracting and technical personnel and by legal counsel to assure the propriety of the proposed action. No termination actions shall be instituted by contracting personnel unless, and until, the Executive Director has formally determined in writing that termination is in the Government's best interest.

§ 13-1.605 Debarment.

§ 13-1.605-1 General.

Section 1-1.605-1 of Temporary Regulation 65, which is incorporated into this subpart, refers to the debarring official; references the causes for debarment; explains the necessity for determining whether business dealings should be continued with a firm even when a cause for debarment has been identified; discusses the extent and scope of debarment; and advises that debarment is effective throughout the

executive branch of the Government unless the head of the agency taking the procurement action or an authorized representative states in writing the compelling reasons justifying continued business dealings between that agency and the contractor. Within DOC, the Executive Director is designated as the debarring official and the authorized representative for determining whether there are compelling reasons justifying continued business dealings with a debarred contractor.

§ 13-1.605-2 Causes for debarment.

Refer to § 1-1.605-2 of Temporary Regulation 65 which is incorporated into this subpart.

§ 13-1.605-3 Procedures.

(a) *Investigation and referral.* Procurement officials shall become familiar with the causes for debarment in § 1-1.605-2 of the Temporary Regulation, and shall be alert to information which indicates that a contractor (to which the Department routinely awards, or plans to award, contracts) has committed an action which is properly includable as a cause for debarment. If it is learned (through dealings with the Office of the Inspector General, Departmental program or finance personnel, etc.) that an appropriately described contractor, not already on the consolidated list, has committed an action which can be identified as a cause for debarment, procurement officials shall determine to the extent possible which other agencies award contracts to this firm, and if any of these agencies have initiated, or plan to initiate, debarment actions.

(1) If debarment is being considered by another agency, the specific circumstances shall be promptly reported by the chief of the procurement activity, in writing, after review by the Office of the Assistant General Counsel for Administration, to the Executive Director, with an explanation as to why debarment actions may be considered by DOC, but are not being recommended. Within 30 working days of receipt of this information, the Executive Director shall make a decision regarding the necessity for additional action, which may involve further coordination with the lead agency which is pursuing debarment, or the preference for DOC to act as the lead agency in imposing debarment. If the decision is made that DOC debarment action is unnecessary, at a minimum, the Executive Director shall advise the Procurement Policy Division of the Office of Procurement Services of the specifics of the case to ensure

Department-wide dissemination for consideration in current responsibility determinations.

(2) If debarment actions are not being considered by another agency, the chief of the procurement activity shall advise the Executive Director, in writing, after review by the Office of the Assistant General Counsel for Administration, of the debarment considerations and shall provide a specific recommendation for debarment of the reasons for not recommending debarment, and all available documentary evidence for supporting the recommendation. It is emphasized that the mere existence of a cause for debarment does not require that a contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

(b) *Decisionmaking process.* Upon receipt of a debarment consideration request, the Executive Director shall review all available documentary evidence and shall promptly make a decision as to whether debarment actions shall be pursued. The matter may be referred to the Department's Inspector General for further investigation if determined necessary. However, after completion of this additional review or investigation, the Executive Director shall make a written determination as to whether debarment procedures are to be initiated. A copy of this determination shall be promptly sent to the initiating procurement activity.

(c) *Notice of proposal to debar.* If the Executive Director determines that formal debarment procedures are to be initiated, he shall promptly notify the contractor and any specifically named affiliates, by certified mail, return receipt requested, of the proposal to debar. The notification shall be reviewed by the Office of the Assistant General Counsel for Administration prior to submittal to the contractor. Section 1-1.605-3(c) of the Temporary Regulation, which is incorporated into this subpart, contains a list of information which shall be included in this notice. The contractor shall be provided 30 calendar days to submit information and argument in opposition to the proposed debarment, and shall also be advised that pending a debarment decision, no contracts will be awarded to, and no subcontracts will be consented to or approved for, the contractor.

(d) *Debarment official's decision.* (1) For debarment actions proposed as a result of conviction or civil judgment, or debarment by another agency based on policies and procedures in effect prior to

August 30, 1982, or as a result of other actions for which there is no dispute over material facts, the Executive Director shall make the final debarment decision on the basis of all information in the administrative record, including any response to the notification of the proposal to debar. If a suspension is not already in effect, the decision shall be made within 30 working days after receipt of information or argument submitted in response to the proposed debarment notification. This decision time requirement may be extended by the Executive Director for good cause.

(2) For proposed debarment actions which are not based upon a conviction, judgment, or debarment by another agency based on policies and procedures in effect prior to August 30, 1982, if the Executive Director determines that the contractor's response to the proposed debarment raises a genuine dispute over facts material to the proposed debarment, fact-finding shall be conducted. The Executive Director shall ensure that such fact-finding shall: (i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person presented by the Department, and (ii) include a transcribing of the fact-finding discussions which shall be made available at cost to the contractor upon request, unless the contractor and the Department mutually agree to waive the requirement for a transcript. The Executive Director shall also ensure that written findings of fact are prepared, and shall base his debarment decision on the facts as found, after considering information and argument submitted by the contractor and any other information in the administrative record.

(A) The Executive Director may refer debarment matters involving disputed material facts to another official for findings of fact. The Executive Director may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(B) Fact-finding meetings shall be conducted as soon as practicable after a determination that there is a genuine dispute over material facts. The Executive Director's final debarment decision shall be made within 30 working days (unless extended for good cause) after the conclusion of the fact-finding meetings held to discuss disputed facts.

(C) The Office of the Assistant General Counsel for Administration shall represent the Department at any fact-finding proceedings under this paragraph (d)(2), and may present

witnesses for the Department and may confront any witnesses presented by the contractor.

(3) In any action in which the proposed debarment is not based upon a conviction, civil judgment or debarment by another agency, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarment official's decision.* (1) A decision to impose debarment also requires prompt notice (within 5 working days after the decision is made) by the Executive Director to the contractor and any affiliates involved by certified mail, return receipt requested. This notice shall contain the elements identified in § 1-1.605-3(e)(1) of the Temporary Regulation which is incorporated into this subpart.

(2) If the decision is not to impose debarment, the Executive Director shall promptly (again, within 5 working days) notify the contractor and any affiliates involved of the decision by certified mail, return receipt requested.

(3) Prompt notice of the debarment decision should additionally be made to the procurement activity which initiated the debarment action.

§ 13-1.605-4 Period of debarment.

At the time a decision is made to impose debarment, the Executive Director shall also determine the period of debarment. This period shall be commensurate with the seriousness of the cause, but generally should not exceed 3 years. If suspension precedes debarment, the suspension period shall be considered in determining the debarment period. Additional guidance regarding extension or termination of the debarment period is contained in § 1-1.605-4 of Temporary Regulation 65 which is incorporated into this subpart.

§ 13-1.605-5 Imputed conduct.

Refer to § 1-1.605-5 of the Temporary Regulation, which is incorporated into this subpart, for an explanation as to the extent to which: improper acts of individuals may be imputed to the contractor (including affiliates and subsidiaries), improper acts of a contractor may be imputed to individuals, and the improper acts of a joint venture may be imputed to participating contractors.

§ 13-1.606 Suspension.

§ 13-1.606-1 General.

Section 1-1.606-1 of Temporary Regulation 65, which is incorporated into this subpart, refers to the suspending official; references the causes for suspension; discusses the

information to be considered in determining whether suspension is appropriate and the scope of the suspension; and advises that a contractor's suspension is effective throughout the executive branch of the Government, unless the head of the agency taking the procurement action, or an authorized representative, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor. Within DOC, the Executive Director is designated as the suspending official and the authorized representative for determining whether there are compelling reasons justifying continued business dealings with a suspended contractor.

§ 13-1.606-2 Causes for suspension.

Refer to § 1-1.606-2 of Temporary Regulation 65 which is incorporated into this subpart.

§ 13-1.606-3 Procedures.

(a) *Investigation and referral.* Any procurement official, based on information gained on his own or on recommendations or information gained from other sources, may recommend suspension of a firm or individual for the causes set forth in § 1-1.606-2 of the Temporary Regulation. The procedures to be followed are the same as those contained in § 13-1.605-3(a), after substituting the word "suspension" for "debarment" and the causes for suspension instead of debarment. Any preliminary determination for recommending suspension should also consider the information presented in § 1-1.606-1 (b) and (c) of the Temporary Regulation which are also incorporated into this subpart.

(b) *Decision-making process.* (1) The procedures to be followed in the suspension decision-making process are again similar to those for debarment, as contained in § 13-1.605-3(b). One major difference between the processes is that an initial decision by the Executive Director regarding debarment results in a proposal to debar, whereas the initial decision for suspension purposes results in immediate suspension.

(2) In actions not based on an indictment, or actions based on a suspension by another agency based on policies and procedures in effect prior to August 30, 1982, if the Executive Director determines that the contractor's submission in opposition (refer to § 13-1.606-3(c)) raises a dispute over facts material to the suspension, and if the Department of Justice or a state prosecuting official advises that substantial interests of the Government in pending or contemplated legal

proceedings, based on the same facts as the suspension, would not be prejudiced, fact-finding shall be conducted. Where the advice of the Department of Justice or state prosecuting officials is to be solicited, requests shall be made through the Department's Assistant General Counsel for Administration. Fact-finding shall be conducted in accordance with the procedures contained in § 13-1.605-3(d)(2).

(c) *Notice of suspension.* When the Executive Director decides to impose suspension of a firm or individual, the Executive Director shall immediately notify the contractor or person and affected affiliates by certified mail, return receipt requested. The notice shall contain the information included in § 1-1.606-3(c) of the Temporary Regulation which is incorporated into this subpart. The information includes advising the contractor that it has 30 days after receipt of the notice to submit information and argument in opposition to the suspension, and that fact-finding to determine disputed material facts will be conducted unless the action is based on an indictment or another agency's suspension based on policies and procedures in effect prior to August 30, 1982, or that substantial interests of the Government or a state in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced. The initiating procurement activity shall also be promptly notified of the suspension decision.

(d) *Suspending official's decision.* (1) In actions: (i) Based on an indictment or a suspension by another agency based on policies and procedures in effect prior to August 30, 1982; (ii) in which the contractor's submission in response to the suspension notice does not raise a dispute over material facts; or (iii) in which fact-finding to determine disputed material facts has been denied on the basis of the advice of the Department of Justice or a state prosecuting official, the Executive Director's decision shall consider the information in the administrative record, including any submission made by the contractor. The decision shall be made within 30 working days after receipt of information or argument submitted in response to the notice of suspension, unless extended for good cause by the Executive Director.

(2) In actions in which fact-finding is determined appropriate, the Executive Director shall ensure that a fact-finding meeting is held and that written findings of fact are prepared. The Executive Director shall base the decision of continuing suspension on the facts as found, together with any information

and argument submitted by the contractor and any other information in the administrative record.

(i) The Executive Director may refer suspension matters involving disputed material facts to another official for findings of fact. The Executive Director may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(ii) Fact-finding meetings shall be conducted as soon as practicable after a determination is made that such meetings are appropriate. The Executive Director shall make the ultimate decision to continue or discontinue imposition of suspension within 30 working days (unless extended for good cause) after the conclusion of the meetings held to discuss disputed facts.

(iii) The Office of the Assistant General Counsel for Administration shall represent the Department at any fact-finding proceedings under this paragraph (d)(2), and may present witnesses for the Department and may confront any witnesses presented by the contractor.

(3) The Executive Director may modify or terminate the initially imposed suspension or leave it in force for the same reasons for terminating or reducing the period or extent of department, (refer to § 1-1.605-4(c) of the Temporary Regulation which is incorporated into this subpart). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or the imposition of debarment by any agency.

(4) After the Executive Director has received and reviewed the contractor's response to the initially imposed suspension, ensured that fact-finding discussions, as appropriate, were held, and made a decision as to the appropriateness of continuing the suspension, he shall promptly notify the contractor of his decision by certified mail, return receipt requested.

§ 13-1.606-4 Period of suspension.

The Executive Director shall establish the period of suspension when he determines that continuation of the initially imposed suspension is appropriate. Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the Executive Director or as provided in § 1-1.606-4 (b) and (c) of the Temporary Regulation which are incorporated into this subpart.

§ 13-1.606-5 Scope of suspension.

The scope of suspension shall be the same as that for debarment, (see § 1-1.605-5 of the Temporary Regulation which is incorporated into this subpart).

§ 13-1.607 Agency procedures.

The Executive Director is responsible for complying with the provisions of Temporary Regulations 65 and this subpart. Coordination with the Office of Procurement Services, Office of General Counsel, Office of Inspector General and the Office of Security and Investigations shall be made as deemed appropriate.

Thomas M. Schultz,
Procurement Analyst.

[FR Doc. 83-298 Filed 1-7-83; 8:45 am]

BILLING CODE 3510-03-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain

management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, National Flood Insurance Program, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0237.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The final base (100-year) flood elevations for selected locations are:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Mendocino County (unincorporated areas) FEMA-6401.	Russian River	At the center of intersection of Howell St and Hopland Road.	*496
			100 feet upstream from the center of Vicky Springs Road.	*597
		Forsythe Creek	100 feet upstream from the center of School Way	*707
		Mill Creek (at Redwood Valley)	50 feet upstream from the center of Uva Drive	*711
			450 feet upstream from confluence with Forsythe Creek.	*794
		York Creek	At the center of U.S. Highway 101 and stream crossing.	*640
		Hensley Creek	100 feet upstream from the center of U.S. Highway 101.	*629
		Ackerman Creek	50 feet upstream from the center of North state Street	*623
		East Fork Russian River	At the center of Main Street and stream crossing	*934
		Eel River	100 feet upstream of Cape Horn Dam	*1,514
		Anderson Creek	50 feet upstream from the center of State Highway 128.	*347
		Mill Creek (near Talmage)	30 feet upstream from the center of Park Lane	*646
		North Fork Mill Creek	50 feet upstream from the center of Guidville Reservation Road.	*722
		Robinson Creek	At the center of State Highway 253 and stream crossing.	*627
		Feliz Creek	At the center of Old Hopland Yorkville Road and stream crossing.	*522
		Tenmile Creek	At the center of Branscomb Road and stream crossing.	*1,610
		Town Creek	At the State Highway 162 and stream crossing	*1,391
		Davis Creek	75 feet upstream from the center of Hearst-Willits Road.	*1,360
		Orrs Creek	At the center of intersection of Orrs Street and Brush Street.	*610
		Doolin Creek	At center of Betty Street and stream crossing	*601